UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NORDSTROM, INC., a Washington corporation; and NIHC, INC., a Colorado corporation,	))))	
Plaintiffs,	))	Case No. 2:12-cv-01853-RSM
v.	))	**AGREEMENT REGARDING DISCOVERY OF**
NOMORERACK RETAIL GROUP, INC., a Canadian corporation; and NOMORERACK.COM, INC., a Delaware corporation,	))))	**ELECTRONICALLY STORED INFORMATION AND ORDER**
Defendants.	))))	

The following protocol regarding discovery and production of electronically stored

information (ESI) is hereby stipulated and agreed by and between the undersigned counsel for

the parties to this action.

I.   STANDARDS FOR PRESERVATION OF ESI.

The following provisions shall apply to the parties' preservation of discoverable ESI:

A.   Absent a showing of good cause by the requesting party, the parties shall not be

required to modify, on a going-forward basis, the procedures used by them in the ordinary

course of business to back up and archive data; provided, however, that the parties shall

preserve all discoverable ESI in their possession, custody or control.

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B.   The following categories of data shall be considered "inaccessible" and, absent a showing of good cause by the requesting party, need not be preserved:

      1.   Deleted, slack, fragmented, or other data only accessible by forensics.

      2.   Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.

      3.   On-line access data such as temporary internet files, history, cache, cookies, and the like.

      a)   Data in metadata fields that are frequently updated automatically, such as last-opened dates.

      b)   Back-up data that are substantially duplicative of data that are more accessible elsewhere.

      c)   Server, system or network logs.

      d)   Data remaining from systems no longer in use that is unintelligible on the systems in use.

      e)   Electronic data (e.g. email, calendars, contact data, notes, and text messages) sent to or from mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), except to the extent that such electronic data is routinely saved elsewhere (such as on a server, laptop, desktop computer, or "cloud" storage).

II.   STANDARDS FOR PRODUCTION OF ESI:

A.   Each document image file shall be named with a unique Bates Number.

B.   ESI shall be produced in the following format: (i) Single page tiff or jpeg images; (ii) Extracted searchable text at a document level; (iii) .DAT load file including, at minimum, all applicable metadata fields listed in Attachment C; and (iv) Opticon or IPRO image load file, as designated by the party receiving the production of ESI.

C.   Hard copy documents shall be produced electronically in the following format: (i) Single page tiff images; (ii) OCR searchable text on document level; (iii) .DAT load file

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including, at minimum, all applicable metadata fields listed in Attachment C; and (iv) Opticon or IPRO image load file, as designated by the party receiving the production of ESI. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.

D.   Spreadsheets (such as Excel and .csv files) and multimedia files (such as video mp3s, sound .wmv, or other similar files) shall be produced in native format. Absent a demonstration by the requesting party of specific need and good cause, or by agreement of the parties, no additional file types need be produced in native format. All documents produced in native format shall be accompanied by the following: (i) .DAT load file including, at minimum, all applicable metadata fields listed in Attachment C; (ii) Document-level extracted searchable text and; (iii) Opticon or IPRO image load file, as designated by the party receiving the production of ESI.

E.   ALLCUSTODIANS metadata field: Upon request, the parties agree to provide, on a document-by-document basis, the name of the individual whose custodial file contained a particular document and any others who possessed copies of the document that were removed via deduplication.

F.   Metadata fields, other than those set forth in Attachment C and the ALLCUSTODIANS field described in section II.E. above, need not be produced absent a demonstration by the requesting party of specific need and good cause, or by agreement of the parties. The parties shall meet and confer as necessary to discuss metadata not produced in connection with such documents.

G.   Plaintiff's e-discovery vendor's preferences for formatting are listed in Attachment A to this Stipulation. Defendant's preferences for formatting are listed in Attachment B to this Stipulation.

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III.   OTHER ESI DISCOVERY PROTOCOLS:

A.   On-site inspection of electronic media shall not be permitted absent a demonstration by the requesting party of specific need and good cause or by agreement of the parties.

B.   Upon demonstration by the requesting party of a good-faith belief that the producing party's response to a specific discovery request was insufficient, or by agreement of the parties, the parties shall meet and confer in good faith concerning what search terms and/or other methodology the producing party used to locate ESI likely to contain responsive information, and on whether and what additional terms or queries should be used in connection with further electronic searches to locate ESI responsive to the specific discovery request.

C.   The parties shall meet and confer to discuss production of any responsive files that are not covered by this protocol, including any proprietary file types requiring specialized software for review, documents containing non-latin languages, database file types, such as Microsoft Access, or metadata not available at the time of production. The parties have discussed and understand that Nordstrom plans to produce archived documents stored by an outside vendor, for which metadata has not been retained. The parties agree to provide the bates ranges of all such documents within three business days of production of the documents.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: September 5, 2013   BAKER WILLIAMS MATTHIESEN LLP

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ATTORNEYS FOR PLAINTIFFS
NORDSTROM, INC. AND NIHC, INC.

Dated: September 10 , 2013   ODIN, FELDMAN & PITTLEMAN, P.C.

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Dated: September 10, 2013   TOUSLEY BRAIN STEPHENS PLLC

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ATTORNEYS FOR DEFENDANTS
NOMORERACK RETAIL GROUP, INC. AND
NOMORERACK.COM, INC.

ORDER

Based on the foregoing, IT IS SO ORDERED this 13th day of September 2013.

RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

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ESI AGREEMENT AND ORDER-5

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ATTACHMENT A

1) **BLACK & WHITE IMAGE FORMAT**

All black & white images are to be provided as single-page, Group IV, "TIFF" images. A resolution of 300 DPI is recommended.

2) **COLOR IMAGE FORMAT**

If providing color images, JPG images with a resolution of 150 to 300 DPI are required. Color TIFF images are not an accepted format.

3) **IMAGE LOAD FILE FORMAT**

All deliverables must include an image load file in UTF-8 that is in a .LOG or .OPT format.

4) **METADATA FILE FORMAT**

All deliverables should include a metadata load file (.DAT file) in UTF-8 with no byte order markers. The metadata load file should contain all applicable metadata fields to be uploaded. Field Name headers need to be included and the delimiters should be standard Concordance delimiters or the following:

Column Delimiter:	^	(94)
Field Delimiter:	|	(124)
New Line Delimiter:	®	(174)
Multi-Entry Delimiter	;	(59)

5) **DOCUMENT TEXT FORMAT**

Document text must be provided in one of the following ways:

a. As separate document-level TXT files with metadata field in the .DAT file listing the relative path to the directory/directories containing the text files **(preferred deliverable format);**

b. As separate document-level TXT files that reside in the same directory as their corresponding images; or

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c. The extracted full text and/or OCR text is included in the .DAT (**least preferred format – has the most potential to create loading errors).**

6) NATIVE FILE FORMAT

If providing files in native format, there must be a metadata field in the .DAT file listing the relative path to the directory/directories containing the native files.

ATTACHMENT A, ESI AGREEMENT-2

ATTACHMENT B

1) BLACK & WHITE IMAGE FORMAT

All black & white images are to be provided as single-page, Group IV, "TIFF" images. A resolution of 300 DPI is recommended.

2) COLOR IMAGE FORMAT

If providing color images, JPG images with a resolution of 150 to 300 DPI are required. Color TIFF images are not an accepted format.

3) IMAGE LOAD FILE FORMAT

All deliverables must include an image load file in ANSI that is in a .LFP format.

4) METADATA FILE FORMAT

All deliverables should include a metadata load file (.DAT file) in ANSI with no byte order markers. The metadata load file should contain all applicable metadata fields to be uploaded. Field Name headers need to be included and the delimiters should be standard Concordance delimiters which are the following:

Comma Delimiter:	¶	(020)
Quote Delimiter	þ	(254)
New Line Delimiter:	®	(174)

5) DOCUMENT TEXT FORMAT

Document text must be provided in the following way:

As separate document-level TXT files with metadata field in the .DAT file listing the relative path to the directory/directories containing the text files.

6) NATIVE FILE FORMAT

If providing files in native format, there must be a metadata field in the .DAT file listing the relative path to the directory/directories containing the native files.

ATTACHMENT B, ESI AGREEMENT-1

ATTACHMENT C

FIELD	DESCRIPTION
BEGBATES	Beginning Bates number assigned to each document.
ENDBATES	Ending Bates number assigned to each document.
BEGATTACH	Beginning Bates number assigned to the group of documents to which the parent document and any attachment documents are associated.
ENDATTACH	Ending Bates number assigned to the group of documents to which the parent document and any attachment documents are associated.
DATEMODIFIED	The Date Modified of the document formatted as follows: MM/DD/ YYYY with leading zeros as appropriate (e.g., 06/07/2009).
DOCTYPE	Document type as identified by metadata associated with the native document indicating the application that created the native document (e.g., Microsoft Word, Microsoft Excel, Adobe Acrobat, Outlook Email, etc.). This field should be populated with "Hard Copy" for any documents originally maintained in paper form.
FILENAME	The filename of a native document
SUBJECT	Email subject line or Efile "Title" metadata
AUTHOR	The document author or originator of the email message.
RECIPIENT	The recipient of any document or email as reflected in the metadata associated with the document (email "to" field).
CC	Names of copied recipients of any document or email as reflected in the metadata associated with the document.
BCC	Names of recipients who received blind copies of any document or email as reflected in the metadata associated with the document.
DEDUPLICATED	Yes/no field indicating whether copies of a document that were removed via deduplication
CONFIDENTIALITY	The confidentiality designation of the document, if any (i.e., "HIGHLY CONFIDENTIAL—ATTORNEY'S EYES ONLY" or "CONFIDENTIAL.").
MD5	Programmatic hash value of the native document from which a given TIFF image or group of TIFF images is derived.

CERTIFICATE OF SERVICE
ESI AGREEMENT AND [PROPOSED] ORDER

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FIELD	DESCRIPTION
DATESENT	The Date Sent of an email message formatted as follows: MM/DD/ YYYY with leading zeros as appropriate (e.g., 06/07/2009).
DATERECEIVED	The Date Received of an email message formatted as follows: MM/DD/ YYYY with leading zeros as appropriate (e.g., 06/07/2009).
TIMESENT	The Time Sent of an email message formatted as follows: HH:MM AM or HH:MM PM (as appropriate) with leading zeros as appropriate (e.g., 01:15 AM).
TIMERECEIVED	The Time Received of an email message formatted as follows: HH:MM AM or HH:MM PM (as appropriate) with leading zeros as appropriate (e.g., 01:15 AM).
TEXTPATH	The relative path to individual document text files on the production media.
NATIVELINK	The relative path to individual native files on the production media.

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CERTIFICATE OF SERVICE
ESI AGREEMENT AND [PROPOSED] ORDER

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